

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:

**ERIC RASMUSSEN and THUNDER
VALLEY AG LLP
Facility #57020**

Taylor County, Iowa

ADMINISTRATIVE CONSENT ORDER
NO. 2015-AFO- 08

TO: Eric Rasmussen, Registered Agent
Thunder Valley Ag LLP
2121 Tennessee Avenue
Bedford, Iowa 50833

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Eric Rasmussen and Thunder Valley Ag LLP (Thunder Valley) for the purpose of resolving violations resulting from a manure discharge from Thunder Valley's open feedlot that resulted in water quality violations. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this administrative consent order should be directed to:

Relating to technical requirements:

Alison Manz, Field Office 4
Iowa Department of Natural Resources
909 West Street, Suite 4
Manchester, Iowa 52057
Phone: 563/927-2640

Relating to legal requirements:

Kelli Book, Attorney for the DNR
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Windsor Heights, Iowa 50324
Phone: 515/725-9572

Payment of penalty to:

Director of the Iowa DNR
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

II. JURISDICTION

This administrative consent order is issued pursuant to the provisions of Iowa Code section 455B.175(1), which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division

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III, Part 1; Iowa Code chapter 459A and the rules adopted or permits issues pursuant thereto; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

III. STATEMENT OF FACTS

1. Thunder Valley is an open cattle feedlot, located in the SE ¼ of Section 13, Ross Township, Taylor County, Iowa. The feedlot property is owned by Eric Rasmussen and the feedlot is operated by Klint and Aimee Bissell. Manure controls at the feedlot consist of two large sediment basins that were converted to total containment basins. The capacity of the facility is between 300-999 head of cattle. An unnamed tributary to Honey Creek is located approximately 100 feet south of the manure controls at the bottom of a slope.

2. On May 31, 2013, Alison Manz, environmental specialist DNR Field Office 4, conducted an inspection at Thunder Valley's feedlot to determine if the total containment basin was containing all the liquid from the feedlot, following the heavy precipitation in the area. Ms. Manz noted that the southeast corner of the basin was overflowing and liquid was flowing into the receiving stream. Ms. Manz spoke with Mr. Rasmussen and he stated that he purchased the facility in March 2013. Prior to March 2013, Mr. Rasmussen had owned the feedlot with Steve Berendes. Ms. Manz explained that she had visited the facility in September 2012 and told Mr. Berendes that the manure must be maintained in the basin at all times. She informed Mr. Berendes that any overflow into a water of the United States would cause the feedlot to be listed as a medium CAFO and the feedlot would be required to obtain a NPDES permit. Mr. Rasmussen stated he would contact Mr. Bissell. Ms. Manz collected laboratory samples from the liquid overflowing the basin as well as the liquid entering the receiving stream. The laboratory sample of the liquid overflowing the basin indicated an ammonia nitrogen concentration of 37 mg/L and the liquid entering the receiving stream indicated an ammonia nitrogen concentration of 29 mg/L. The receiving stream was dark in color and Ms. Manz observed sludge deposits in the cuts between the field and the stream.

3. On June 3, 2013, Ms. Manz returned to the site. A small dirt berm had been constructed to prevent further overflows from occurring. The basin had not been pumped out yet due to the heavy precipitation in the area.

4. On June 12, 2013, Ms. Manz returned to the site and spoke with Mr. Bissell. Mr. Bissell stated that the liquid would be irrigated through a small travelling gun to the adjacent pasture ground that morning. Ms. Manz advised that the irrigation activities be watched closely to ensure there was no runoff. Ms. Manz also noted that additional dirt work had been completed at the site.

5. During Ms. Manz's three visits to the facility she noted two areas that did not appear to have manure controls. She noted that the area on the south side of

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the feedlot appeared to bypass the basin and that a feedlot pen was added on the north side of the existing feedlot. It appeared that the runoff from both areas flowed towards waters of the state.

6. On June 19, 2013, DNR issued a Notice of Violation letter to Thunder Valley for the water quality violations observed during Ms. Manz's investigation. The letter informed the facility it would need to obtain a permit and that the matter was being referred for further enforcement.

7. This feedlot has been operated under several different owners in the past and DNR Field Office 4 has visited the facility on numerous occasions and documented manure discharges.

a. In December 2000, Ms. Manz conducted a complaint investigation at the facility. The capacity of the facility at the time was greater than 1,000 head of cattle; thus an NPDES permit was required.

b. In February 2001, Mike Risser, owner of the facility at the time, submitted a signed registration form to the DNR indicating the capacity of the facility was 1,800 head of cattle. In August 2001, DNR sent Mr. Risser a letter indicating that the facility was a high priority as part of the Iowa Feedlot Plan.

c. In December 2003, DNR conducted an on-site assessment at the facility. During the inspection, the DNR personnel observed manure solids entering the creek. At the time of the inspection, the facility reported the current head number as 800 with a capacity of 1,000. DNR sent the facility a letter providing two options for compliance: 1) obtain a NPDES permit and operate the facility with total containment or 2) maintain the feedlot with less than 1,000 head and install manure controls.

d. In January 2004, Jay Lischer and Floyd Beason, owners of the facility at the time, submitted a statement of intent verifying that the feedlot would be maintained with less than 1,000 head of cattle at all times. In April 2004, Ms. Manz visited the facility to determine if the man-made drainage ditch that connected the feedlot to the receiving stream had been eliminated. Ms. Manz determined that the ditch had been eliminated, but noted the manure controls were full. Ms. Manz required that the structures be pumped out to prevent water quality violations from occurring.

e. In May 2006, DNR Field Office 4 personnel visited the facility to conduct a compliance review. The field office personnel noted that while there was no discharge at the time of the inspection there was a probability that a discharge would occur because the manure control structures were not being maintained properly.

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f. In January 2007, Ms. Manz visited the facility and observed evidence of manure runoff into a water of the United States.

g. In August 2011, Ms. Manz visited the facility. She noted that there was no discharge at the time, but the liquid from the settling basins had trenched through the grass buffer strip. The facility was required to submit a plan of action by December 2011 and required manure controls to be implemented by May 2012.

h. In April 2012, Ms. Manz visited the facility and met with Mr. Berendes, owner of the facility at the time. She explained that the facility would be considered as a medium CAFO because of the size of the facility and the man-made conveyances to a water of the United States. Mr. Berendes did not want to go through the permitting process so he stated the tile intakes in the settling basins would be removed and the grass filter strip would no longer be used. In June 2012, Ms. Manz visited the feedlot and the tile intake had not been removed. Mr. Berendes was notified if a discharge occurred that further legal action would be taken. In September 2012, Ms. Manz visited the feedlot. She documented that the settling basins were cleaned out and the tile intakes were removed. The settling basins were converted to containment basins. Ms. Manz told Mr. Berendes that maintenance was critical and if there was a discharge to a water of the United States, a permit would be required.

8. DNR and Klint and Aimee Bissell have worked to address the concerns with the facility. The Bissells worked with an environmental consultant to evaluate the design of the facility's structures according to DNR requirements and to identify any remedial actions. As a result of the review the following actions were taken or will be taken to address the violations: 1) a Nutrient Management Plan was submitted on January 26, 2015; 2) two additional settlement basins will be constructed to drain into the existing containment basin; total containment will be achieved and verified by the consultant; 3) the north facing pen will be eliminated; and 4) dewatering at the facility will be conducted through irrigation with a traveling gun.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 459A.104 provides that the Environmental Protection Commission (Commission) shall adopt rules related to the construction or operation of animal feeding operations, including permit and minimum manure control requirements. The Commission has adopted such rules at 567 IAC chapter 65.

2. 567 IAC 61.3(2) provides general water quality criteria and prohibits discharges that will produce objectionable color, odor or other aesthetically objectionable conditions; settle to form sludge deposits; interfere with livestock watering; or are toxic to animal or plant life. The laboratory results from the May 31,

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2013 inspection indicated elevated pollutants and the water was dark. The above mentioned facts indicate violations of the general water quality criteria.

3. DNR has determined that there is no likelihood that the violations identified in Paragraph 2, Section IV. Conclusions of Law will recur if Mr. Rasmussen and Thunder Valley implement the requirements set forth in Paragraphs 1-4, Section V. Order of this administrative consent order.

V. ORDER

THEREFORE, the DNR orders and Mr. Rasmussen and Thunder Valley agree to do the following:

1. Mr. Rasmussen and Thunder Valley shall construct two additional settlement basins to drain into the existing containment basin within 90 days of the date the Director signs this administrative consent order. This construction shall result in total containment and shall be verified by the consultant;
2. Mr. Rasmussen and Thunder Valley shall eliminate the north facing pen within 60 days of the date the Directors signs this administrative consent order. Documentation of the closure shall be submitted to DNR Field Office 4 within 10 days of the closure;
3. Mr. Rasmussen and Thunder Valley shall dewater the facility through irrigation with a traveling gun to assure two feet of freeboard in the retention basin at all times, unless another method is proposed and approved by DNR Field Office 4; and
4. Mr. Rasmussen and Thunder Valley shall pay an administrative penalty in the amount of \$5,000.00 within 30 days of the date the Director signs this administrative consent order.

VI. PENALTY

1. Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for each of the water quality violations involved in this matter.

2. Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00, which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC chapter 10. Pursuant to this chapter, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with an

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administrative penalty of \$5,000.00. Mr. Rasmussen and Thunder Valley are jointly and severally liable for the penalty assessment. The administrative penalty is determined as follows:

Economic Benefit – 567 IAC chapter 10 requires that the DNR consider the costs saved or likely to be saved by noncompliance. 567 IAC 10.2(1) states that “where the violator received an economic benefit through the violation or by not taking timely compliance or corrective measures, the department shall take enforcement action which includes penalties which at least offset the economic benefit.” 567 IAC 10.2(1) further states, “reasonable estimates of economic benefit should be made where clear data are not available.” Mr. Rasmussen and Thunder Valley gained an economic benefit by failing to properly contain the manure from the facility. Mr. Rasmussen and Thunder Valley has delayed the costs associated with installing additional manure controls and by not maintaining the existing manure controls. These costs include, but are not limited to consultant fees, engineer fees, and recordkeeping. Based on the above facts, the economic benefit Mr. Rasmussen and Thunder Valley received was at least \$1,500.00 and that amount is assessed for this factor.

Gravity – One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the DNR has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. DNR Field Office 4 documented a manure discharge that led to documented water quality violations. These violations threaten the integrity of the regulatory programs because compliance with animal feeding operation requirements is required of all persons in this state. Therefore, \$2,000.00 is assessed for this factor.

Culpability – Mr. Rasmussen and Thunder Valley has a duty to remain knowledgeable of DNR’s requirements and to be alert to the probability that their conduct is subject to DNR’s rules. Therefore, \$1,500.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS


This administrative consent order is entered into knowingly and with the consent of Eric Rasmussen and Thunder Valley. For that reason Eric Rasmussen and Thunder Valley waive the right to appeal this administrative consent order or any part thereof.

VIII. NONCOMPLIANCE

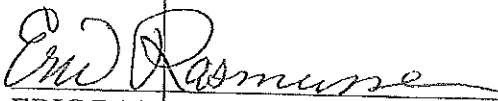
Compliance with Section V of this administrative consent order constitutes full satisfaction of all requirements pertaining to the violations described in this

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administrative consent order. Failure to comply with this administrative consent order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191.


CHUCK GIPP, DIRECTOR
Iowa Department of Natural Resources

Dated this 30th day of
March, 2015.


ERIC RASMUSSEN

Dated this 19 day of
March, 2015.


THUNDER VALLEY AG LLP

Dated this 23 day of
March, 2015.

Facility #57020; Kelli Book, DNR Field Office 4, EPA, VIII.D.1.B and VIII.D.3.a

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